IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15156 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

SHARDABEN H JOSHI - Respondent(s)

==========

Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
None for Respondent(s) : 1,
MR PREMAL R JOSHI for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/09/2005

ORAL JUDGMENT

In the present petition, the petitioner ST Corporation has challenged the legality of the award dated 3rd January 2003 passed by the Industrial Tribunal,

Ahmedabad.

2. The respondent herein was engaged as driver by the petitioner Corporation. On 3rd November 1993 when the respondent was driving the bus, it met with an accident and the bus dashed with a scooter. In the accident, scooter driver expired. On account of the said accident, the petitioner initiated departmental inquiry against the respondent. Upon conclusion of the inquiry, the Disciplinary Authority imposed punishment of dismissing the workman from service. In further appeal, however, his punishment was reduced and the workman was reinstated in service and punishment of placing him on the original scale for a period of two years was imposed. The workman challenged the punishment by raising reference before the Industrial Tribunal which was referred for adjudication as Reference (IT) No.138/97. The Industrial Tribunal allowed the reference and set aside the punishment. In the impugned award, it was recorded that the Conductor was not examined during the course of inquiry and in the criminal case the driver was acquitted. It was, therefore, observed that solely on the basis of the evidence of the reporter who was not an eye-witness, the charge could not have been held proved.

Upon this conclusion, the Industrial Tribunal was pleased to set aside the penalty imposed.

3. It can be seen that there is no dispute about the fact that the bus which the respondent was driving met with an accident. The accident resulted into death of the scooter driver. There was no explanation whatsoever rendered by the respondent as to how such an accident took place. The reporter who was examined during the course of inquiry had recorded the statement of the conductor of the bus. In his statement, the Conductor had stated that after starting the bus from Ramnagar, the driver was driving the bus in a most negligent manner. It appeared that he had perhaps consumed some intoxicating substance and right upto the time when the accident occurred, the driving was not proper.

4. It may also be noted that the previous record of the respondent is also extremely poor. There were as many as 44 misconducts proved against him and large number of these misconducts pertained to negligent driving. On one previous occasion also, on account of the negligent driving, he was dismissed from service, but later on reinstated.

5. Considering the material on record, I find that the Industrial Tribunal erred in interfering with the punishment imposed on the respondent. In the decision of the Hon'ble Supreme Court in the case of Cholan Roadways v. G.Thirugnanasambandam, 2005 AIR SCW 84 the Hon'ble Supreme Court observed that the Industrial Tribunal committed misdirection in law in so far as it did not apply the principles of *res ipsa liquitur* which was relevant for the purpose of the case and thus failed to take into consideration the relevant factor and further more took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatory required to be examined. It was observed that the Industrial Tribunal further failed to apply the correct standard of proof in relation to domestic inquiry which is preponderance of probability and applied the standard of proof required for a criminal trial. These observations were made in the background of the allegations against the bus driver who was charged for having driven the vehicle in a careless and negligent manner causing accident and death of the passengers. In the present case also, as noted earlier, without any apparent cause, the bus which the respondent was

driving met with an accident killing the scooterist. No plausible explanation came forth from the respondent as to how such an accident could have caused without his negligent driving. The reporter who was examined during the course of the inquiry, who in turn had recorded the statement of the conductor, has clearly stated that the driver appeared to be under the influence of some intoxicant substance. His driving was rash and negligent. In past also, the driver had caused several accidents causing loss to the Corporation and damage to its reputation. The Industrial Tribunal was, therefore, not justified in brushing aside the conclusions arrived at by the employer during the course of inquiry and quashing the penalty imposed.

6. In the result, the impugned award is quashed. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)